

# Michigan Judges Association

## Founded 1927

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May 15, 2013

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The Honorable Kevin Cotter  
Chair, Judiciary Committee  
Michigan House of Representatives  
S-1288 House Office Building  
P.O. Box 30014  
Lansing, Michigan 48909

Re: House Bill 4704

Dear Representative Cotter:

The Michigan Judges Association (MJA) **opposes** House Bill 4704.

The bill is unnecessary and hurts more than helps in resolving court and funding unit disputes--undoing years of case law development and Supreme Court directive to its lower courts that gives some certainty and clear guidance as how to approach these disputes. *See 46th Circuit Trial Court v Crawford*, 476 Mich 131 (2006); *Judges for Third Judicial Circuit v Wayne County*, 15 Mich App 71 1969; and, *Supreme Court Administrative Order No. 1998-5*.

In fact, disputes with the **judiciary** are rare, and the cases more often than not come out in favor of the funding unit. The judicial burden to prevail is extremely high, and the proposed changes set out HB 4704 tip the playing field in an overreaching way that minimizes or disregards the proper place of the judiciary to check or challenge on rare occasion the decisions of its funding unit regarding the funding of court operations.

**1. Nullifies the court's role in its funding.** Specifically the language found at page 3, lines 3-5, of HB 4704 states that a county appropriations act "is presumed to fund those activities of a county mandated by law at a serviceable level." "Serviceable" is already an extremely low threshold, and the burden is already on the judiciary to prove its funding case by clear and convincing evidence. It is not clear how this presumption might actually work in practice, but theoretically it makes an already difficult and potentially legitimate case to prove nearly impossible, possibly nullifying any real role for the court regarding its funding. And the *Crawford* decision already covers and explains the standards and procedures well (function funded at a serviceable level will be carried out in a barely adequate matter, but it will be carried out [and funded]).

**2. Allows priority for discretionary versus necessary funding.**

Specifically the language found at page 3, lines 21-23, states that "the court hearing a suit shall consider the financial ability of the county to pay...." Again, although not clear on how this might be interpreted or applied (more litigation likely would be necessary to define terms and concepts) this could serve to undo that part of the decision in the *Judges for Third Judicial Circuit Third* that importantly makes a part of the analysis of ability to pay whether or not the funding unit has looked to cut discretionary spending before cutting necessary services such as bailiffs, indigent defense, etc. This existing approach is practical and protects necessary services and the community.

**3. Eliminates equitable jurisdiction to temporarily protect status quo to avoid serious consequences.** Specifically the language found at page 7, lines 5-9, states that "a suit under this section shall not constitute a basis for expenditure of funds ... in excess of that authorized...." In practice, if the funding unit, for example, cuts necessary funding by one-half, this language may serve to prevent a court from spending for necessary services or a reviewing court from exercising its equitable jurisdiction to enjoin the cut where it might be appropriate to do so in order to protect the community while the dispute is worked on and resolved. Taking away reviewing court authority to do its job in this so critical of areas is bad policy. Reviewing courts appropriately weigh such issues on a case-by-case basis to ensure that unnecessary damage is not done. There absolutely is a necessary role for judicial discretion here.

The Michigan Judges Association (MJA) opposes House Bill 4704. Thank-you for considering our comments and concerns.

Sincerely,

Hon. James Alexander  
Hon. Tracey Yokich  
Co-Chairs, MJA Legislative Committee